NO. PD-0228-17

IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

THE STATE OF TEXAS, Appellant

V.

JOSE LUIS CORTEZ, Appellee

Appeal from Potter County

*****

APPELLEE'S FIRST AMENDED BRIEF

*****

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NAMES OF ALL PARTIES TO THE TRIAL COURT'S JUDGMENT

***The parties to the trial court's judgment are the Defendant/Appellee, Jose Luis Cortez, and Appellant, the State of Texas.**

***The case was tried before the Honorable Douglas Woodburn, 108th District Court, Potter County, Texas.**

***Counsel at trial and for Appellant (State of Texas) in the Seventh Court of Appeals was Richard Martindale, Assistant District Attorney, 501 S. Fillmore Street, Suite 5A, Amarillo, Texas 79101-2449.**

***Counsel for the State before this Court is John R. Messinger, Assistant State Prosecuting Attorney, P.O. Box 13046, Austin, Texas 78711.**

***Counsel for Defendant at trial, for Appellee in the Seventh Court of Appeals, and now before this Court, is Q. Todd Hatter, Hatter Law Firm, PLLC, 821 S.W. 9th Avenue, Amarillo, Texas 79101.**

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APPELLEE'S FIRST AMENDED BRIEF

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

It is funny, how in its appeal, the State first briefed their appellate case as having two issues, (1) claiming the trial court's findings of fact and conclusions of law were not supported by the record or the law, and (2) that the trial court abused its discretion in finding that law enforcement lacked reasonable suspicion or other lawful basis for law enforcement to have conducted the traffic stop. The State claimed in their initial appellate argument in 2015, that this was a *Heien v. North Carolina* case due to, if the officer was mistaken that it was an objectively reasonable mistake of fact, the law, or both. It is worth noting that the Officer never claimed at the suppression hearing that he was mistaken about anything, the facts or the law. The officer claimed to be clear on the law and claimed that the exceptions numbered three and five under Texas Transportation Code 545.058 did not apply in this case. The trial court found the exceptions did apply, even if

the vehicle had been operated on the improved shoulder, but the trial court also found that driving on the fog line, if that occurred, was not a violation of law. The 7th Court of Appeals affirmed the trial court's suppression of the evidence.

When the State's initial argument failed at the 7th Court of Appeals, then the State brought her appeal and brief to this Court, claiming the issues presented to be first, where does the improved shoulder begin and second that there was a lack of controlling precedent and asked the court to consider whether law enforcement's actions were objectively reasonable under *Heien v. North Carolina*. This Court then remanded back to the 7th Court of Appeals for consideration under *Heien v. North Carolina* the State again lost with the court finding *Heien v. North Carolina* distinguishable from the case at bar, that law enforcement conducted an illegal stop and that two exceptions existed under the facts which legally permitted appellee to drive on the improved shoulder, even assuming that he did.

Now before this Court, the State desires to change her argument completely and abandon the front door entry that has been found to be unsuccessful twice and doesn't want this Court to consider the officer's actions or whether the officer's belief was objectively reasonable under *Heien v. North Carolina*, but rather come in through a back door on the same illegal search and seizure and do an in depth analysis of the law and possibly create new law, all the while including in the State's argument and arguing for the first time on appeal, the Texas Manual on Uniform Traffic Control Devices. Some matters cannot be raised for the first time on appeal and appellee believes this to be one such matter: claiming that the Texas Manual on Uniform Traffic Control Devices was one of the reasons that Officer Snelgrooes believed what he observed was a violation of

law and possibly he was mistaken in that regard because of problems with the content of the laws when viewed in light of the Texas Manual on Uniform Traffic Control Devices.

This case should not be about whether the State's Appellate team can locate some ambiguity somewhere in some law or some rule book, but rather, was Trooper Snelgrooes belief objectively reasonable given what he saw (after he was objectively unreasonable in breaking two laws to chase a clean vehicle), and what he believed at the time and considering the law or laws he considered at the time.

STATEMENT OF THE CASE

After law enforcement observed a vehicle that was just too clean, without reason or lawful basis, law enforcement violated two Texas traffic laws (speeding and driving in the left lane not passing) to place the officer and his patrol unit in a position to view a vehicle being operated by Appellee who was driving the vehicle that was *just too clean to be legal*. Appellee was thereafter stopped for allegedly driving on an improved shoulder without an exception, searched, arrested, and charged with Possession with Intent to Deliver. Appellee filed a Motion to Suppress. The Motion to Suppress was granted, concluding that Appellee did not drive on the improved shoulder, and that even had he driven on the improved shoulder, an exception existed on each of the two alleged occasions. The officer's testimony at the suppression hearing differed from the in-car video admitted, which video demonstrated no violations. The trial court found the traffic stop was without lawful basis, was unconstitutional, and suppressed the evidence. The trial court filed its written findings of fact and conclusions of law. The court of appeals found us in strange days if two people in a clean car are indicators of criminal activity. The Court of Appeals agreed with the trial court, and held that driving on a fog line is not

driving on the shoulder and took notice of the two exceptions to driving on an improved shoulder that were available to Appellee in this case, and that the trial court did not abuse its discretion in granting the Motion to Suppress. The Court of Appeals found the trial court executed findings of fact and conclusions of law supporting the trial court's decision and found that the record and the video supported the trial court's findings. Neither the trial court nor the Court of Appeals entered specific findings regarding the officer's violations of traffic laws.

STATEMENT REGARDING ORAL ARGUMENT

No oral argument is requested by Appellee.

ISSUES PRESENTED

1. Is it proper to get a Court of Criminal Appeals opinion on a legal study of various laws and manuals that are raised for the first time on appeal, instead of addressing the issues previously raised and pending appellate resolution?

2. Are Texas Code of Criminal Procedure Article 38.23 and the Fourth Amendment to the United States Constitution still good law meaning what they say?

3. Does it matter if an officer's later beliefs are reasonable when his initial beliefs were unreasonable and his actions, illegal?

4. If the answer to issue #2 is yes, and the answer to #3 is no, what difference does it make what an officer sees or whether his belief based upon the sighting is objectionably reasonable (under Heien v. North Carolina 135 S. Ct. 530 (2014)) if he illegally got into the position for the observation?

STATEMENT OF FACTS

State Trooper Snelgrooes testified that he was parked on Interstate 40 access road, when Appellee's vehicle went passed him and that several indicators drew his attention to Appellee's vehicle, that those criminal indicators were (1) a mid to late model mini-van that was (2) very clean, RR: P. 18 L. 12 - P.19 L.7, that the initial indicators in of themselves were nothing, RR: P. 19 L.8 – L. 24, that law enforcement should not break the law in hopes of someday catching somebody breaking the law, RR: P.20 L.15-18, that he went "flying up to the vehicle" to run a license check, RR: P.27 L.17-19, that there were signs posted on both sides of the road that said "Left Lane for Passing Only", that he caught up to Appellee's vehicle and operated his police car in the left lane for the purpose of running a license plate check and then moved back in behind Appellee without passing him, RR: P. 20 L.19 – P.23 L.6, that Appellee drove on the improved shoulder on two occasions, RR: P.10 L23 – P.11 L.1, that if the in-car video was played he could point out the first violation, RR: P.26 L.23 – P.27 L.4, that the violation was pretty noticeable, RR: P.27 L.15, and that the first violation can be seen as his patrol vehicle pulls alongside the defendant's vehicle, RR: P.27-17 –P.28 L.22. The video evidence did not show the defendant's vehicle on the fog line. VIDEO – State's Exhibit 1. During Snelgrooes cross examination the trial court stopped the examination concerning the first alleged violation and instructs counsel to move to the second alleged violation, stating that Snelgrooes testified that the second violation was the basis for the traffic stop. RR: P.33 L.11-14. Snelgrooes testified that Appellee's vehicle moved to the right as the trooper's vehicle was coming up on Appellee's left side. RR: P.40 L.1-20.

Texas Transportation Code 545.058 (a) lists an exception allowing operation on an improved shoulder under subsection (5) when moving over to allow a faster vehicle to pass. RR: P.40 L.16-21. Snelgrooes later testified that a shadow was cast that crossed the line and was questioned about a shadow crossing a line. RR: P.35 L.8-11. Snelgrooes testified that Appellee's vehicle crossed the line on two occasions. RR: P.35 L.21-22. The audio on Snelgrooes in-car video recorded Snelgrooes telling Appellee he was stopped for his tire touching the little white line as he exited the ramp. VIDEO – State's Exhibit 1. Snelgrooes testified that he only discussed one violation with the defendant at the time of the stop, touching the line at the exit ramp. RR: P.35 L.23 – P.36 L.13. Snelgrooes testified that Texas Transportation Code 545.058(a) driving on improved shoulder includes an exception (number 3) "to decelerate before making a right turn". RR: P.36 L.23 – P.37 L.18, that Appellee was moving to the right at the exit ramp and exiting to the right and moving into the right lane and "he's attempting to turn right". RR: P.37 L.25 – P.38 L.8. Snelgrooes testified that as a result of the traffic stop physical evidence and statements were obtained. RR: P.42 L.9-19. The trial court found exceptions #3 and #5 of Texas Transportation Code 545.058(a) applied based upon the facts, CR 70-71 (Finding of Fact 7) and CR 71 (Finding of Fact 8) and CR 72 (Conclusions of Law 22, 23, and 24) and that the stop was without lawful basis, CR72 (Conclusions of law 25). A true copy of the findings of fact and conclusions of law are attached hereto as **Exhibit A** and incorporated herein by reference.

SUMMARY OF THE ARGUMENT

Upon seeing a mini-van that was "too clean", Trooper Snelgrooes broke two laws (speeding and driving in the left lane not passing) to place his patrol vehicle in close

proximity to Appellee to make further observations. Snelgrooes testified that he was allowed to speed, RR: P.22 L.2-15, and he drove in the left lane, not to pass, but merely to run a license plate check (contrary to Texas law and the posted signs on both sides of the road), RR: P.20 L24-P.22 L.2; Video at 11-14 seconds. Snelgrooes only discussed one instance of driving on "the little white line" during the traffic stop, Video at 3:23-3:29, but later put in his police report and ultimately testified that there were two violations of driving on an improved shoulder, See P.2 of officer's six-page report attached hereto as **Exhibit B** and incorporated herein by reference. The trial court's findings of fact and conclusions of law are supported by the record, the video exhibit admitted, and the law. Texas Code of Criminal Procedure 38.23, a copy is attached hereto as **Exhibit C** and incorporated herein by reference, states that no evidence obtained illegally shall be used against a defendant at trial. Snelgrooes broke two laws and stopped Appellee without a lawful basis since no traffic violations were committed as evidenced by the video exhibit and the two exceptions afforded Appellee had he actually driven on the shoulder. The law supports that two exceptions are available to a motorist operating a vehicle on the improved shoulder when allowing a faster vehicle to pass and when slowing to make a right turn. Had defendant drove on the shoulder (which he did not), an exception in the law exists on both alleged occasions (when the officer was pulling alongside defendant's vehicle and when the defendant was exiting to the right on the off ramp and moving into the right lane prior to turning right into Love's Truck Stop parking lot, all of which is clearly seen in the video exhibit. At no time in the video, can the defendant's vehicle be seen driving on an improved shoulder. A shadow crossing a line is not a violation of Texas traffic law. A trooper seeing a "too clean van" is not

justified in breaking laws to engage in a pursuit to find a reason to stop, detain, search, and arrest a person. When law enforcement having seen no violations or alleged violations, breaks two traffic laws to try to find someone breaking a law, Code of Criminal Procedure 38.23 and the Fourth Amendment to the United States Constitution (see **exhibit E** attached hereto and incorporated herein by reference) are violated when the person is stopped and the unlawfully obtained evidence is sought to be used at trial. Snelgrooes created a reason to stop Appellee, while possessing the knowledge regarding the exceptions enumerated in Texas Transportation Code 545.058(a) (3) and (5). Snelgrooes was objectively unreasonable in his belief to chase clean cars. Under the Snelgrooes standard, every vehicle is subject to being stopped and detained. Snelgrooes ignored two laws that he himself broke to get closer to Appellee, and then ignored two laws (exceptions) that excused Appellee's conduct (if act was committed), but Snelgrooes didn't care that the law provided exceptions since he decided not to apply them. This case is not about mistake of law or fact, it is about disregard for the law by law enforcement, thus *Heien v. North Carolina* is distinguishable from the case at bar and should not be considered because of the vastly different set of facts regarding the officer's conduct. The VIDEO exhibit, the best evidence, supports that no traffic violation occurred and supports the trial court's granting of the motion to suppress and the Court of Appeals affirmation.

ARGUMENT

I. It is improper to get a Court of Criminal Appeals opinion on a legal study of various laws and manuals that are raised for the first time on appeal,

instead of addressing the issues that have been pending appellate resolution.

The State first briefed their appellate case as having two issues, (1) claiming the trial court's findings of fact and conclusions of law were not supported by the record or the law, and (2) that the trial court abused its discretion in finding that law enforcement lacked reasonable suspicion or other lawful basis for law enforcement to have conducted the traffic stop. The State claimed in their initial appellate argument in 2015, that this was a *Heien v. North Carolina* case due to, if the officer was mistaken that it was an objectively reasonable mistake of fact, the law, or both. It is worth noting that the Officer never claimed at the suppression hearing that he was mistaken about anything, the facts or the law. The officer claimed to be clear on the law and claimed that the exceptions numbered three and five under Texas Transportation Code 545.058 did not apply in this case. The trial court found the exceptions did apply, even if the vehicle had been operated on the improved shoulder, but the trial court also found that driving on the fog line, if that occurred, was not a violation of law. The 7th Court of Appeals affirmed the trial court's suppression of the evidence.

When the State's initial argument failed at the 7th Court of Appeals, then the State brought her appeal and brief to this Court, claiming the issues presented to be first, where does the improved shoulder begin and second that there was a lack of controlling precedent and asked the court to consider whether law enforcement's actions were objectively reasonable under *Heien v. North Carolina*. This Court then remanded back to the 7th Court of Appeals for consideration under *Heien v. North Carolina* the State again lost with the court finding *Heien v. North Carolina* distinguishable from the case at bar,

that law enforcement conducted an illegal stop and that two exceptions existed under the facts which legally permitted appellee to drive on the improved shoulder, even assuming that he did.

Now before this Court, the State desires to change her argument completely and abandon the front door entry that has been found to be unsuccessful twice and doesn't want this Court to consider the officer's actions or whether the officer's belief was objectively reasonable under *Heien v. North Carolina*, but rather come in through a back door on the same illegal search and seizure and do an in depth analysis of the law and possibly create new law, all the while including in the State's argument and arguing for the first time on appeal, the Texas Manual on Uniform Traffic Control Devices. Some matters cannot be raised for the first time on appeal and appellee believes this to be one such matter: claiming that the Texas Manual on Uniform Traffic Control Devices was one of the reasons that Officer Snelgrooes believed what he observed was a violation of law and possibly he was mistaken in that regard because of problems with the content of the laws when viewed in light of the Texas Manual on Uniform Traffic Control Devices.

This case should not be about whether the State's Appellate team can locate some ambiguity somewhere in some law or some rule book, but rather, was Trooper Snelgrooes belief objectively reasonable given what he saw (after he was objectively unreasonable in breaking two laws to chase a clean vehicle), and what he believed at the time and considering the law or laws he considered at the time. The State's effort at ditching the issues they have been arguing for two years, in which they have previously claimed make this case akin to *Heien*, is nothing more than an attempt to force this appellate court to engage in a legal analysis homework study and render an opinion on an

isolated issue and is improper. The State is raising issues under interpretation of The Texas Manual on Uniform Traffic Control Devices for the first time amidst their various stages of appeal.

II. Yes, Texas Code of Criminal Procedure, Article 38.23, and the Fourth Amendment to the United States Constitution are good law and they mean what they say.

This Court is requested to take judicial notice of Texas Code of Criminal Procedure 38.23 that says no evidence unlawfully obtained shall be used against a defendant at trial, and that the fourth amendment to the United States Constitution grants us the right to be free from unreasonable searches and seizures. A traffic stop is a seizure and in this case, was without warrant or other lawful basis, because law enforcement engaged in a pursuit because Appellee's vehicle was "too clean a mini-van". A vehicle which is too-clean cannot be the basis for law enforcement breaking the laws any more than a house looking too big or too small would justify kicking the door to get a closer look inside.

Trooper Snelgrooes saw a min-van that looked too clean to suit him, so he engaged in a pursuit, breaking two traffic laws (speeding) and (driving in the left lane not passing) to run a license check and get a better look at Appellee. If Snelgrooes had kicked a door to a residence (a man's castle), because the door was red or too clean, we wouldn't expend effort delving into an in-depth analysis as to the objective reasonableness of what Snelgrooes did after he got inside the door, we would question why he kicked the door without a warrant or other lawful reason. Any evidence obtained after law enforcement broke two laws, should be suppressed and

not used at trial, because the fourth Amendment to the United States Constitution and Texas Code of Criminal Procedure 38.23 require it and they are the law and they mean what they say.

III. No, it does not matter what an *objectively unreasonable officer* thinks about what he sees after he intentionally breaks the law to better his position to make the observation.

The State is asking this Court to perform an in-depth study into the "fog line", how, where, or if it is defined, and whether or not an ambiguity exists which the State says, may have created objective reasonableness on the part of Trooper Snelgrooes due to a mistake of law or of fact. The issue in this case should not be about the fog line, or little white line, it should be about law enforcement intentionally violating laws to better their position for observations and then intentionally ignoring applicable exception in the law that apply in the circumstances.

It cannot be said, that a car that is too clean is an indicator of criminal activity. The officer himself testified that this in itself is nothing. RR: P.19 L.8-L.21. The officer then testified that when you add it up, it becomes something, but at the point that Snelgrooes decided to start breaking laws he didn't have anything to add up. RR: P.19 L.8-L.21.

A clean van, that was all Snelgrooes had, so he engaged in a pursuit, speeding above posted limits, and then maneuvered his patrol unit into the left lane to observe Appellee and to run his license plate, but not for the purpose of passing him. There were two signs posted, one on each side of the interstate that said, "left lane for passing only". RR: P.20 L.24 – P.22 L.1. The officer ignored the signs, ignored the

law, and used the lane for his purpose, to get a better look at a vehicle that was too clean.

Snelgrooes then wants the Courts to believe that while he is driving in the left lane, not passing, but typing on his in-car computer to run a license plate check, while trying to drive, he sees this alleged encroachment onto or across a fog line. Snelgrooes simply made an assumption, that because the vehicle moved over towards the right, that it must have crossed the line onto the shoulder. It is a dangerous slippery slope when we begin to listen to an officer engaged in illegal conduct as to what they think they saw, rather than challenge why they were then breaking the law themselves, simply to try to make an observation.

Snelgrooes was aware of the exceptions permissible under Texas Transportation Code 545.058(a) at the time of the observations. Snelgrooes noted the seven exceptions in his written police report on page 2. See **Exhibit B**, a true copy of page 2 is attached hereto and incorporated herein by reference where he puts in his report that there are seven exceptions, except Snelgrooes says they don't apply.

Snelgrooes knew that a driver was allowed to drive on an improved shoulder if being passed by a faster vehicle when it can be done safely and is necessary. Snelgrooes didn't care that an exception existed, this van was just too clean! From Appellee's perspective, Appellee had to believe the vehicle (police car) that was coming up on him in the passing lane was going to pass him, that is what the lane is for, at least until Snelgrooes uses it. Appellee was completely justified in moving his vehicle to the right, though he didn't drive on the shoulder, because he had a car hanging on his left side. At minimum, Snelgrooes vehicle had to be a major distraction, who

wouldn't have been distracted and moving over for a car that acted like it was going to pass and then didn't.

Another exception applies during the second alleged violation, which was during the exit to the right for the off ramp to leave the highway and travel on a roadway that was now a two lane-two way, and where the original improved shoulder has now disappeared into lanes of traffic. Assuming a driver in this instance even needed an exception, since the shoulder disappears completely, Appellee was again justified as found in the findings of fact and conclusions of law by the trial court. A true copy of the trial court's findings of fact and conclusions of law is attached hereto as **Exhibit A**, see conclusion paragraph number 24.

Snelgrooes plainly tells Appellee during the traffic stop as can be heard in the Video exhibit at 3:23 – 3:29, "the reason I stopped you is, when you exit back there you got off on the shoulder, you drove over on the white line, that little white line". Snelgrooes own testimony is that he stopped Appellee for driving on the shoulder as he exited the off ramp. Again, Snelgrooes ignores the law because this vehicle is just too clean! Snelgrooes knows that an exception exists for operation on the shoulder to decelerate for making a right turn, see Texas Transportation Code 545.058(a)(3), a true copy is attached hereto and incorporated herein by reference as **Exhibit D**. It is objectively unreasonable to believe that an operator can be travelling at highway speeds, exit the off ramp, pass the yield sign on the two-lane two-way street, and turn right into loves truck stop without decelerating and moving to the right.
Nothing about Snelgrooes belief was objectively reasonable, but again, it shouldn't matter what he believes about what he is observing at the second instance, since he

had broken two laws to place himself in the position to make the observations that he claims to have made. Snelgrooes ignored the two laws that he broke and ignores the two applicable exceptions under Texas Transportation Code 545.028(a). The stop and seizure were illegal and no further analysis about a white line are necessary about mistaken beliefs as to the law or the facts.

IV. It makes no difference what Snelgrooes observed or whether his observations and belief might have been objectively reasonable under *Heien v. North Carolina*, because Snelgrooes was himself engaged in illegal conduct to make additional observations, Sergeant Darisse was not, thus the case at bar is distinguishable.

The State argues that *Heien* should be applied due to Snelgrooes mistake or mistakes, claiming that the belief or mistake (law or fact) was objectively reasonable under the circumstances because of what they argue is a lack of controlling authority. A police officer that intentionally breaks two laws because a vehicle is too-clean, is not objectively reasonable. A six-year veteran officer that knows what passing is, and what deceleration for making a right turn are, and writes in his police report and later testifies that he knew about the two exceptions (when being passed or decelerating to make a right turn) that exist in Texas Transportation Code 545.058(a)(3) and (5) then chooses to ignore those legal exceptions is not being objectively reasonable. The State would have this Court ignore the illegal conduct of Snelgrooes, ignore the exceptions under 545.058(a)(3) and (5), and instead, try to distract this Court with chasing a rabbit to define a fog line, or an edge, and split hairs. The task should be avoided all together, at least in answering this case, which is not one of mistake, it is

one of law enforcement ignoring the law that is clear. Law enforcement cannot break laws in hopes of someday, catching somebody, somewhere, maybe breaking a law. Law enforcement cannot justify a traffic stop by watching deceleration for a right turn and then calling it something else or refusing to apply the exception in 545.058(a). This officer was not mistaken, he was with knowledge, ignoring the law that he knew, in order to execute his plan, to stop a vehicle for being too-clean.

CONCLUSION

The Trial Court's Findings of Fact and Conclusions of Law are supported by the record, the video exhibit, and the law. The Trial Court did not abuse its discretion and the Court of Appeals affirmed that suppression, twice now. This Court should also affirm the suppression in recognition of the fourth Amendment to the United States Constitution, the Texas Code of Criminal Procedure, Article 38.23, and the fact that it is not against the law to have a clean vehicle. Moreover, this Court should refuse to engage in an in depth legal study to try to help the State find a backdoor way into claiming the officer was objectively reasonable based upon manuals that the officer never claimed to rely upon.

PRAYER

For all the foregoing reasons, Appellee, prays that this Court will AFFIRM the suppression by the trial court and the decision of the Court of Appeals which was delivered on October 12, 2016.

This Appellee's First Amended Brief dated the 31st day of July 2017.

/s/ Q. Todd Hatter

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CERTIFICATE OF COMPLIANCE

On July 31, 2017, I hereby certify that the foregoing brief contains, as reflected in the computer program word count, 4,914 words.

/s/ Q. Todd Hatter
Q. Todd Hatter
ATTORNEY FOR APPELLEE
JOSE LUIS CORTEZ

CERTIFICATE OF SERVICE

On this 1st day of August 2017, a true copy of Appellee's First Amended Brief was delivered to the following in the manner indicated below:

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ATTORNEY FOR APPELLEE
JOSE LUIS CORTEZ

EXHIBIT A

NO. 68,587-E

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
	§	
	§	108TH JUDICIAL DISTRICT
vs.	§	
	§	POTTER COUNTY, TEXAS
JOSE LUIS CORTEZ	§	

Trial Court's Findings of Fact and Conclusions of Law

In response to the state's request, the Court makes and files the following as its original Findings of Fact and Conclusions of Law:

Findings of Fact –

1. Defendant is charged with possession of a controlled substance with the intent to deliver, an enhanced First Degree Felony.

2. On January 26, 2014, during nighttime hours, State Trooper Snelgrooes was parked along the Interstate 40 access road when he first observed the vehicle being driven by the Defendant (hereinafter "the Defendant's vehicle") travelling Eastbound on Interstate 40 passing by the Trooper's location. He followed Defendant and made a traffic stop following which contraband and oral statements were obtained.

3. Defendant timely filed a Motion to Suppress the contraband and oral statements obtained following the Trooper's traffic stop.

4. The Trial Court held a hearing May 4, 2015 on Defendant's Motion to Suppress the Evidence which alleged that the evidence obtained at the scene of arrest was unlawfully and unconstitutionally obtained by law enforcement.

5. At the hearing on Defendant's Motion to Suppress the State stipulated that the arrest had been made without a warrant and that the State bore the burden of establishing that the seizure was lawful and consistent with state and Federal Constitutional requirements. Officer Snelgrooes was the sole witness.called at the suppression hearing.

6. When the Defendant's vehicle passed Snelgrooes' parked vehicle Snelgrooes observed that the Defendant was travelling in a late model mini-van which was very clean on the outside, had a "newer" registration, and may have been occupied by two people. These observations constituted possible indications to Snelgrooes that the Defendant was engaged in drug trafficking.

7. Snelgrooes began following the Defendant's vehicle while the Defendant's vehicle was traveling in an easterly direction in the right hand lane of the four lane roadway. He then sped up and pulled into the left hand lane as his vehicle approached the

Defendant's vehicle. As Snelgrooes' vehicle approached and pulled into the left hand lane, Defendant's vehicle moved toward the improved shoulder.

8. A short time later, Defendant's vehicle moved toward the improved shoulder a second time as the Defendant's vehicle exited the Interstate to the right at a marked exit ramp.

9. Snelgrooes stated he stopped Defendant's vehicle because he observed that the Defendant's vehicle drive on the improved shoulder of the roadway on the two occasions noted above, each of which event he believed to constitute violations of state traffic laws.

10. During the suppression hearing, an oral and video tape recorded by equipment maintained in Snelgrooes' patrol vehicle was played. On the tape, Snelgrooes approached the driver's side of the van and told Defendant that he stopped the Defendant because he had driven… "onto the white line, that little white line."

11. The video recording played at the hearing clearly demonstrated each of the two occasions upon which Snelgooes testified he had observed the Defendant's vehicle drive upon the improved shoulder. On each occasion the right rear tire (or its shadow) was observed by the Court to come in the proximity of and possibly touch the inside portion or more of the white line delineating the roadway from the improved shoulder (referred in testimony, and hereinafter, as the "fog line") but not to extend past the the outermost edge of the fog line.

12. The state produced no evidence that Snelgooes observed, or believed he had observed, any portion of the Defendant's vehicle pass outside the outermost edge of the fog line.

13. Following the traffic stop, Snelgrooes searched the van, located contraband, and obtained statements which the State intended to utilize at a later prosecution of the case on the merits.

14. At the conclusion of the hearing on Defendant's Motion to Suppress, the Trial Court GRANTED Defendant's Motion which prohibited the State from introducing the contraband or statements at trial on the merits.

Conclusions of Law-

15. This Court has jurisdiction of the parties and of the subject matter of this case.

16. The Constitution of the state of Texas and of the United States prohibit unreasonable searches and seizures made by law enforcement.

17. Warrentless searches are per se unreasonable unless pursuant to a recognized exception to that rule. A recognized exception exists allowing the state to seize contraband and obtain statements following a lawful arrest or detention once law enforcement personnel have probable cause to believe there has been a violation of

state traffic laws, or have a reasonable suspicion that a crime is or has been committed by the operator or passenger of a motor vehicle.

18. The traffic stop made in this case was made without probable cause, reasonable suspicion, or other lawful basis.

19. The information which raised the officer's suspicion was not a reasonable basis for a traffic stop or detention.

20. Texas Transportation Code section 545.058 provides that operating a motor vehicle on the improved shoulder of a state roadway is prohibited unless authorized by the section.

21. The improved shoulder of a state roadway begins at the point of the fog line which is furthest from the center of the roadway.

22. The Defendant's vehicle did not cross outside the outermost edge of the fog line onto the improved shoulder of the roadway. Crossing over the portion of the fog line nearest the center of the roadway or upon the fog line is not a violation of Texas traffic law; therefore the vehicle was not operated on the improved shoulder of the roadway on either occasion made the basis for the Officer Snelgrooes' traffic stop.

23. Texas Transportation Code section 545.058 (5) provides that driving on the improved shoulder of a roadway is permissible under the circumstances when and to the extent necessary a driver is being passed by another vehicle. The first occasion in which the officer testified that the Defendant drove onto the improved shoulder occurred after the officer's vehicle entered the passing lane and accelerated toward the Defendant's vehicle; therefore, the Defendant was authorized by statute to drive on the improved shoulder at such time.

24. Texas Transportation Code section 545.058 (3) provides that driving on the improved shoulder of a roadway is permissible when and to the extent necessary a driver is decelerating or slowing to make a right turn from the roadway. The Defendant was in the process of decelerating and slowing to make a right turn from the roadway onto the exit ramp when the second occasion took place; therefore, the Defendant was authorized by statute to drive on the improved shoulder at such time.

25. The Defendant was unlawfully stopped and detained; therefore evidence garnered as a result of the detention is not admissible at trial.

26. Without the evidence which the Trial Court suppressed prosecution cannot proceed.

Findings of Fact as Conclusions of Law –

27. Any finding of fact that is a conclusion of law shall be deemed a conclusion of law.

SIGNED on May 26, 2015.

JUDGE PRESIDING

EXHIBIT B

DETAILS:

1. 1. My name is Jered Snelgrooes and the Texas Department of Public Safety has employed me since October 1, 2008. I was commissioned as a certified Texas Peace Officer on October 9, 2009, upon completion of the Texas Department of Public Safety Basic Training Academy in Austin, Texas. I am currently assigned to the Texas Highway Patrol in Amarillo, Texas. My duties are general traffic patrol and general police patrol simultaneously.

Probable Cause for Stop:

1. On Sunday January 26, 2014 I was on routine patrol in Potter County. I was traveling east on IH-40. I noticed a white Dodge Caravan that was traveling east, that drove on this improved shoulder on two separate occasions.

2. Texas Traffic Code § 545.062. § 545.058. Driving on Improved Shoulder. (a) An operator may drive on an improved shoulder to the right of the main traveled portion of a roadway if that operation is necessary and may be done safely, but only:(1) to stop, stand, or park; (2) to accelerate before entering the main traveled lane of traffic; (3) to decelerate before making a right turn; (4) to pass another vehicle that is slowing or stopped on the main traveled portion of the highway, disabled, or preparing to make a left turn; (5) to allow another vehicle traveling faster to pass; (6) as permitted or required by an official traffic-control device; or (7) to avoid a collision.

3. It did not appear to me that the mini-van drove on the shoulder for any of the listed reasons. I activated my emergency red and blue lights to stop the vehicle for driving on the improved shoulder. As I activate my emergency lights it triggers my in car video to start recording video, this also activates a body microphone that is carried on my person.

EXHIBIT C

TEXAS CODE OF CRIMINAL PROCEDURE

Art. 38.23. EVIDENCE NOT TO BE USED. (a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

(b) It is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966. Amended by Acts 1987, 70th Leg., ch. 546, Sec. 1, eff. Sept. 1, 1987.

EXHIBIT D

TEXAS TRANSPORTATION CODE

Sec. 545.058. DRIVING ON IMPROVED SHOULDER. (a) An operator may drive on an improved shoulder to the right of the main traveled portion of a roadway if that operation is necessary and may be done safely, but only:

(1) to stop, stand, or park;

(2) to accelerate before entering the main traveled lane of traffic;

(3) to decelerate before making a right turn;

(4) to pass another vehicle that is slowing or stopped on the main traveled portion of the highway, disabled, or preparing to make a left turn;

(5) to allow another vehicle traveling faster to pass;

(6) as permitted or required by an official traffic-control device; or

(7) to avoid a collision.

(b) An operator may drive on an improved shoulder to the left of the main traveled portion of a divided or limited-access or controlled-access highway if that operation may be done safely, but only:

(1) to slow or stop when the vehicle is disabled and traffic or other circumstances prohibit the safe movement of the vehicle to the shoulder to the right of the main traveled portion of the roadway;

(2) as permitted or required by an official traffic-control device; or

(3) to avoid a collision.

(c) A limitation in this section on driving on an improved shoulder does not apply to:

(1) an authorized emergency vehicle responding to a call;

(2) a police patrol; or

(3) a bicycle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

EXHIBIT E

UNITED STATES CONSTITUTION – FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.